

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

IN RE: §
§
CURVES AND COMBAT BOOTS, LLC, § CASE NO. 24-41331
§ JUDGE BRENDA T. RHOADES
DEBTOR § HEARING: NONE SET

TEXAS COMPTROLLER OF PUBLIC ACCOUNTS' MOTION TO DISMISS CASE

YOUR RIGHTS MAY BE AFFECTED BY THE RELIEF SOUGHT IN THIS PLEADING. YOU SHOULD READ THIS PLEADING CAREFULLY AND DISCUSS WITH YOUR ATTORNEY, IF YOU HAVE ONE IN THIS BANKRUPUTCY CASE. IF YOU OPPOSE THE RELIEF SOUGHT BY THIS PLEADING YOU MUST FILE A WRITTEN OBJECTION, EXPLAINING THE FACTUAL AND/OR LEGAL BASIS FOR OPPOSING THE RELIEF.

NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN FOURTEEN (14) DAYS FROM THE DATE OF SERVICE SHOWN IN THE CERTIFICATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FLING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THE PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING WITH APPROPRIATE NOTICE. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.

The Texas Comptroller of Public Accounts, Revenue Accounting Division (“Comptroller”) by and through the Texas Attorney General's Office, moves to dismiss this case pursuant to 11 U.S.C. § 1112 (b).

1. Curves and Cowboy Boots, LLC (“Debtor”) filed its Chapter 11 bankruptcy petitions on June 4, 2024.
2. The Debtor has failed to file the pre-petition sales tax returns for April 2024 and May 2024. Further, the Debtor has failed to file and pay post-petition sales tax returns for the periods of June 2024, July 2024, August 2024, September 2024, or October 2024, despite Debtor’s

repeated promises to do so.

3. Pursuant to 28 U.S.C. §§ 959 and 960, a debtor-in-possession is required to manage and operate the property of the estate according to the requirements of the valid laws of the State of Texas in the same manner that the owner or possessor of such property would be bound to do if in possession outside of bankruptcy. As part of the BAPCPA amendments effective in cases filed after October 17, 2005, Congress amended 28 U.S.C. § 960 to specifically require post-petition taxes to be paid "on or before the due date of the tax under applicable non-bankruptcy law." Here, Debtor is required to remit Texas sales and use taxes on a timely basis accompanied by sworn tax returns. *See* Texas Tax Code §§ 151.401, 151.402.

4. This Court, on the request of a party in interest, and after notice and a hearing, may convert a Chapter 11 case to a case under Chapter 7, or dismiss a Chapter 11 case, whichever is in the best interest of the creditors and the estate, for cause, including continuing loss to or diminution of the estate, absence of a reasonable likelihood of rehabilitation, and gross mismanagement of the estate. 11 U.S.C. §1112(b)(4)(A) & (B). By failing to remit Texas sales and use taxes post-petition, sufficient cause exists for this Court to act against the Debtors under 11 U.S.C. §1112(b). In re Moore Construction, Inc., 206 B.R. 436, 439 (Bankr. N.D. Tex. 1997). Indeed, Congress also amended § 1112 in BAPCPA to specifically identify "failure to timely pay taxes due after the date of the order for relief or to file tax returns due after the date of the order for relief" as a ground for dismissing or converting Chapter 11 cases. § 1112(b)(4)(I) Congress's intent is clear, and dismissal or conversion is warranted here.

ACCORDINGLY, the Comptroller prays that:

1. The Court find that sufficient cause exists due to the Debtor's failure to remit post-petition taxes to warrant dismissal under 11 U.S.C. § 1112(b);
2. The Court dismiss this Chapter 11 proceeding or, in the alternative, convert the case to Chapter 7; and

3. The Court grant such other relief to which the Comptroller may show itself entitled.

Respectfully submitted,

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**ATTORNEYS FOR THE TEXAS COMPTROLLER
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CERTIFICATE OF SERVICE

I certify that on November 22, 2024, a true copy of the foregoing was served by the method and on the following parties as indicated:

By First Class Mail:

Parties on the attached service list.

By Electronic Means as listed on the Court's ECF Noticing System:

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